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10/058,805

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EXAMINER

NGUYEN, THANH T

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROYUKI TOMOIKE

Appeal 2009-006329
Application 10/058,805
Technology Center 2400

Decided: November 25, 2009

Before KENNETH W. HAIRSTON, MARK S. HOFF
and BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.
HAIRSTON, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. §§ 6(b) and 134 from the final rejection of claims 1 to 7.

We will reverse the obviousness rejections of claims 1 to 7.

Appellant has invented a mobile communication system and method in which a plurality of mobile stations are capable of simultaneously participating in communication with a portable information terminal unit,

and the portable information terminal unit is adapted to download or upload data from or to a content server through the plurality of mobile stations, and wherein the data is divided into a plurality of pieces and each of the plurality of mobile stations uploads or downloads only a portion of the plurality of pieces of the data (Fig. 1; Spec. 4 to 7, 16 to 18; Abstract).

Claim 1 is representative of the claimed invention, and it reads as follows:

1. A mobile communication system, comprising:
 - a portable information terminal unit;
 - a plurality of mobile stations capable of participating simultaneously in communication with said portable information terminal unit;
 - a packet mobile switching center which is adapted to communicate with said plurality of mobile stations through a radio access network;
 - a packet mobile gateway switching center which is adapted to communicate with said packet mobile switching center through a mobile data network; and
 - a content server which is adapted to communicate with said packet mobile gateway switching center through the Internet;
- wherein said portable information terminal unit is adapted to download or upload data from or to said content server through the plurality of mobile stations, wherein the data is divided into a plurality of pieces and each of the plurality of mobile stations uploads or downloads only a portion of the plurality of pieces of the data.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Chern	US 6,381,465 B1	Apr. 30, 2002 (filed Sep. 20, 1999)
Martin	US 6,610,105 B1	Aug. 26, 2003 (filed May 22 2000)

The Examiner rejected claims 1 to 7 under 35 U.S.C. § 103(a) based upon the teachings of Martin and Chern.

According to the Examiner (Final Rej. 2, 3), Martin describes all of the claimed mobile communication system and method except for explicitly disclosing that a plurality of mobile stations and a portable information unit “is adapted to download or upload data from or to said content server through the plurality of mobile stations, wherein the data is divided into a plurality of pieces and each of the plurality of mobile stations uploads or downloads only a portion of the plurality of pieces of the data.” Based upon the mobile station and network teachings of Chern, the Examiner is of the opinion (Final Rej. 4) that it would have been obvious to one of ordinary skill in the art to modify the mobile communication system and method of Martin with the teachings of Chern.

Appellant argues *inter alia* that Martin and Chern fail to teach or suggest a plurality of mobile stations capable of participating simultaneously in communication with a portable information terminal unit (App. Br. 10, and that “Martin and Chern also fail [to] teach or even suggest, at least a ‘portable information terminal unit adapted to download or upload data from or to said content server through the plurality of mobile stations, wherein the data is divided into a plurality of pieces and each of the plurality of

mobile stations uploads or downloads only a portion of the plurality of pieces of data” (App. Br. 12).

ISSUE

Has Appellant demonstrated that the Examiner erred by finding that the applied references teach or would have suggested a mobile communication system or method in which a plurality of mobile stations are capable of participating simultaneously in communication with a portable information terminal unit, and in which data is divided into a plurality of pieces and each of the plurality of mobile stations uploads or downloads only a portion of the plurality of pieces of the data?

FINDINGS OF FACT (FF)

1. Martin describes a mobile device 106 that accesses network servers 104-1 to 104-m or a PC 110 via wireless airnet 102 and wired landnet 100. The airnet 102 is capable of communicating simultaneously with a plurality of mobile devices 106 (Figs. 1A, 1B, and 2A; col. 4, l. 52 to col. 5, l. 50; col. 6, ll. 39 to 44). A server 114 serves as an interface between the two different networks.

2. Chern describes a system and method for attaching an advertisement to a Short Message Service (SMS) alert message sent to a wireless device 130 if there is sufficient space in the SMS message for the advertisement (Fig. 2; col. 5, ll. 41 to 58; col. 13, ll. 12 to 23; Abstract).

PRINCIPLES OF LAW

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support a legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

ANALYSIS

We agree with the Appellant that the mobile device access system of Martin (FF 1) and the attachment of an advertisement to a SMS message as in Chern (FF 2) fail to teach or suggest the claimed plurality of mobile stations that are capable of participating simultaneously in communication with the portable information terminal unit, and the claimed division of data into a plurality of pieces with each of the plurality of mobile stations uploading or downloading only a portion of the plurality of pieces of the data. Thus, the obviousness rejection of claims 1 to 7 is reversed because the Examiner's articulated reasoning in the rejection does not possess a rational underpinning to support a legal conclusion of obviousness. *Kahn*, 441 F.3d at 988.

CONCLUSION OF LAW

Appellant has demonstrated that the Examiner erred by finding that the applied references teach or suggest a mobile communication system or method in which a plurality of mobile stations are capable of participating simultaneously in communication with the portable information terminal unit, and in which data is divided into a plurality of pieces and each of the

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plurality of mobile stations uploads or downloads only a portion of the plurality of pieces of the data.

ORDER

The decision of the Examiner rejecting claims 1 to 7 under 35 U.S.C. § 103(a) is reversed.

REVERSED

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